

FILED

JUN 16 2008

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA1 POSTED ON WEBSITE  
2 NOT FOR PUBLICATION3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA

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6 In re: ) Case No. 08-90753-D-7  
7 JESSE ADRIAN WAGNER, ) ) DC No. JAW-1  
8 Debtor. ) ) Date: June 11, 2008  
9 ) Time: 10:30 a.m.  
10 ) Place: 1130 12th St., Ste. C  
Modesto, CA 95354

11 This memorandum decision is not approved for publication and may  
12 not be cited except when relevant under the doctrine of law of  
the case or the rules of claim preclusion or issue preclusion.

13 MEMORANDUM DECISION

14 On April 28, 2008, Jesse Adrian Wagner ("the debtor")  
15 initiated this chapter 7 case. At the same time, the debtor  
16 filed the required Exhibit D – Individual Debtor's Statement of  
17 Compliance with Credit Counseling Requirement. The debtor  
18 checked the box indicating that he had requested credit  
19 counseling services from an approved agency but was unable to  
20 obtain such services during the five days from the time he made  
21 the request. Along with his petition and Exhibit D, the debtor  
22 submitted a Notice of Motion and Motion for Determination of  
23 Waiver of Credit Counseling Services ("the Motion"), in which he  
24 set forth what he contends are circumstances justifying a waiver  
25 of the credit counseling and debtor education requirements of 11  
U.S.C. §§ 109(h)(1) and 727(a)(11). For the following reasons,  
27 the court will grant the motion as to both requirements.

28 / / /

1       The general rules are that (1) a bankruptcy debtor must  
2 obtain credit counseling within the 180-day period preceding the  
3 date the petition is filed from an agency approved by the United  
4 States Trustee, and (2) as a condition to receiving a chapter 7  
5 bankruptcy discharge, a debtor must complete an instructional  
6 course in personal financial management. 11 U.S.C. §§ 109(h)(1),  
7 727(a)(11). These requirements shall not apply if the debtor is  
8 disabled, as defined in 11 U.S.C. § 109(h)(4). §§ 109(h)(4),  
9 727(a)(11). A person is so disabled if he or she is "so  
10 physically impaired as to be unable, after reasonable effort, to  
11 participate in an in person, telephone, or Internet briefing  
12 . . . ." § 109(h)(4).

13       The debtor in this case is incarcerated at the Sierra  
14 Conservation Center, and is unable to use the Internet or to make  
15 telephone calls longer than 15 minutes. The debtor may only make  
16 telephone calls that are collect calls. In an effort to comply  
17 with the credit counseling requirement, the debtor obtained a  
18 list of approved providers, and attempted to contact the 15  
19 credit counseling agencies on the list, but none would accept his  
20 collect call.

21       The court concludes from this evidence that the debtor,  
22 after reasonable effort, is unable to participate in credit  
23 counseling or a personal financial management course either in  
24 person, by telephone, or by way of an Internet briefing. Thus,  
25 the debtor is disabled, within the meaning of § 109(h)(4), and  
26 will be excused from the requirements of participating in credit  
27 counseling and the personal financial management course.

28 / / /

1 The court will enter an appropriate order.

2 Dated: June 16, 2008

*Robert Bardwil*

3 ROBERT S. BARDWIL

4 United States Bankruptcy Judge

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**CERTIFICATE OF MAILING**

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a true copy of the attached document was mailed today to the following entities listed at the address(es) shown below:

Office of the US Trustee  
501 "I" Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

Michael McGranahan  
P.O. Box 5018  
Modesto, CA 95352

Jesse Adrian Wagner  
CDCR# F-54554  
5150 O'Byrnes Ferry Rd.  
Jamestown, CA 95352

DATE: June 16, 2008

Andrea Lovgren

Andrea Lovgren